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Submitted
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~586.~~ 344 121

WILLIAM W. BOND, JAMES BOND, AND CALVIN W. HARBERT, EXECUTORS OF JAMES BOND, DECEASED, AND H. R. BATE, PLAINTIFFS IN ERROR,

vs.

JOHN M. MOORE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

Dcny, ass

FILED OCTOBER 12, 1874.

Feb 20 1875
motion denied
Dec 23 1878
argued
March 8th

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No. 586.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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a *Writ of error from Supreme Court of U. S.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of the State of Tennessee:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Tennessee, before you or some of you, being the highest court of law or equity of the said State of Tennessee in which a decision could be had in the said suit between William W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate, the last one, security in the appeal-bond, and John M. Moore, wherein was drawn in question the construction of a statute of the United States, and the decision was against the right, title, and privilege, or exemption severally set up or claimed under such statute and other matters over which the Supreme Court of the United States has jurisdiction, as will fully appear by the record herein, a manifest error happened, to the great damage of William W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate, as by their complaint appears, and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and speedily, send you the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may
b have the same at Washington on the first Monday in October next, in the said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected, *that* said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United should be done.

Witness the honorable Morrison R. Wait', Chief-Justice of the Supreme Court of the United States, this the ninth day of June, 1874.

HORACE E. ANDREWS,
Clerk U. S. Circuit Court, D. W. Tenn.

(Indorsed:) Filed June 10th, 1874. Jno. H. Freeman, clk.

1 THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, on the first Monday in April, A. D. 1874. Present, the honorable A. O. P. Nicholson, chief-justice, and Robert McFarland, Thomas J. Freeman, James W. Deaderick, Peter Turney, and John L. T. Sneed, associate judges.

Be it remembered that at, to wit, on the 4th day of April, 1874, the transcript of the record following was filed in the office of the clerk of the supreme court of said State, at Jackson, to wit:

W. W. AND JAMES BOND, AND C. W. HARBERT, executors of James Bond, sr., deceased,
vs.
JOHN M. MOORE.

STATE OF TENNESSEE:

2 Be it remembered that a circuit court of the fourteenth judicial circuit, began and held in and for the county of Haywood, at the

court-house in the town of Brownsville, on the fourth Monday in May, in the year of our Lord eighteen hundred and sixty-nine, and 93d year of American Independence. Present and presiding, the honorable William P. Bond, judge of said circuit.

The court was opened in due form by John L. Sherman, sheriff of said county, when the following with other proceedings were had, to wit:

State of Tennessee to the sheriff of Haywood County, greeting:

You are hereby commanded to summon John M. Moore, if to be found in your county, personally to be and appear at a circuit court to be held for the county of Haywood, at the court-house in the town of Brownsville, on the fourth Monday in January next, then and there to
3 answer James Bond, assignee, &c., in a plea of trespass on this case to his damage three thousand dollars. Herein fail not, and have you then and there this writ. Witness Joseph M. Rutledge, clerk of said court, at office, the fourth Monday in September, 1868, and year of American Independence.

. M. RUTLEDGE, *Clerk.*

Prosecution bond.

I acknowledge myself the security of James Bond, plaintiff, and indebted to John Moore, defendant, in the sum of two hundred and fifty dollars, to be void if the said plaintiff shall prosecute with effect an action of trespass*or*, the case this day commenced by said plaintiff in the circuit court of Haywood County, Tennessee, against the said defendant, or upon failure to do so shall pay all such cost and damages as may be awarded against said plaintiff, and jointly against said
4 plaintiff and myself by the court having cognizance thereof.

Witness my hand and seal this the 16th day of December, 1868.

JOHN C. READ. [SEAL.]

Issued 16th day of December, 1868.

J. M. RUTLEDGE, *Clerk.*

Came to hand same day issued, and executed in full the same day.

J. L. SHERMAN, *Sheriff.*

STATE OF TENNESSEE:

Circuit court of Haywood County, January term, 1869.

JAMES BOND, ASSIGNEE, &C., }
v. }
JOHN M. MOORE. }

The plaintiff sues the defendant on a bill of exchange here to
5 the court shown, drawn by John A. Taliaferro on the thirteenth day of February, 1862, who is not sued in this action, on Messrs. Bradley, Wilson & Co., New Orleans, Louisiana, for two thousand dollars, payable four months after the date thereof, to the order of the defendant, John M. Moore, waiving acceptance, and by him endorsed to the plaintiff, which endorsement is now here to the court shown. The bill of exchange at maturity was not presented for payment and the same was not paid. Plaintiff avers that the said drawer, John A. Taliaferro, who is not sued in this action, was not entitled to have the said bill presented for payment, and notice of non-payment, because, as plaintiff avers, he had not at the time of drawing of said bill, nor at any time

afterwards before the bill became due, any effects in the hands of the said drawees, nor any reasonable grounds to expect that the bill would be paid, and therefore he had not sustained any damages by reason
6 of the bill not having been presented for payment at maturity thereof, and as to said defendant John M. Moore, plaintiff alleges in excuse for not presenting said bill at maturity an impossibility because of the obstructions of war, political disturbances, and interruption of intercourse between the residence of the plaintiff and that of the drawees. Afterwards, and in the exercise of reasonable diligence, to wit, on the twentieth day of June, 1865, the said bill was presented to the said Bradley, Wilson & Co. for payment, which was refused, and thereupon said bill was protested for non-payment, of which said defendant had due notice.

The bill, with damages, interest thereon, and charges of protest, remain' unpaid, to the damage of the plaintiff three thousand dollars. And whereas heretofore, to wit, on the thirteenth day of Febr'y, 1862, in the town of Trenton, Tennessee, the said John A. Taliaferro, who is not sued in this action, drew a certain other bill of exchange here to
7 the court shown, for the sum of ten thousand dollars, payable four months after the date thereof to the order of said defendant, John M. Moore, waiving acceptance, who endorsed the same to the plaintiff, which said endorsement is here to the court shown, which bill was drawn on Bradley, Wilson & Co., New Orleans, Louisiana, but was not presented for payment at maturity, because of obstructions of war, political disturbances, and interruption of intercourse between the residence of plaintiff and that of the drawees; but as soon thereafter as practicable, and in the exercise of due diligence, to wit, on the twentieth day of June, 1865, said bill was presented to the said drawees for payment, which, being refused, said bill was protested for non-payment, of which defendant had due notice. Plaintiff avers that afterwards, and with a full knowledge that said bill had not been presented for payment at maturity, the defendant, at the request of the plaintiff,
8 promised to pay him the sum of money in said bill specified, with damages and interest thereon and cost, yet the defendant has not paid the sum to the damage of the plaintiff three thousand dollars; and the plaintiff avers that John A. Taliaferro, the drawer thereof, indemnified the said defendant on said endorsement to save him harmless or from loss by reason of such endorsement by him, the said defendant. And plaintiff avers that the said defendant, on the day of , promised to pay the sum, which he has failed to do, to the plaintiff's damage three thousand dollars, and therefore he sues.

BATE & READ,
Atts. for Plff.

In circuit court of Haywood County, January term, 1869.

JAMES BOND
v.
JOHN M. MOORE.

And said defendant Moore, by atty., comes, and for plea in this
9 case, says that at the time of the commencement of this suit in this case, and before and after the said commencement of this suit, complainant had proceeding in this hon'l court, another suit for the same identical bill of exchange on which this suit is brought; that said suit was brought by complainant as assignee, &c., vs. defendant and his

endorsers, and that the same had progressed to an issue, and been once tried before a jury, and a mistrial had, the jury discharged; all of which appears by the record and proceedings of this court now remaining on file in the office of the clerk of the same. And defendant further says that the parties to this suit complainant is the same as in the other suit, and this defendant is the same John M. Moore therein sued, and no other; and this defendant is ready to verify, &c.

LEA & LIVINGSTON,
THOS. J. AND JNO. H. FREEMAN,
RAINES & BLACK, *Attys.*

10 I, Thos. J. Freeman, atty. for deft., make oath that the within plea is true.

THOS. J. FREEMAN.

Sworn & subscribed before me 20th Febr'y, 1869.

J. M. RUTLEDGE.

In circuit court at Brownsville, Tennessee, January term, 1869.

JAMES BOND
v.
JOHN M. MOORE.

And the said plaintiff, by atty., comes and says that the said plea of the said defendant by him herein pleaded is not sufficient in law, and demurs to the same, and for cause of demurrer shows, 1st, that the said defendant in said plea does not aver and show that at the time of filing his said plea, that the said another suit for the same identical cause of action, in the same identical bill of exchange, on which this suit
11 is brought was then still pending in this honorable court, undetermined and undisposed of, in which said another suit plaintiff herein was plaintiff as assignee vs. defendant and his endorsers.

2d. Defendant does not come and show, as by said plea by him herein pleaded, that there has been a verdict or judgment, or both, on the said another suit, alleged in said plea to have been brought for the same identical cause of action, on the same identical bill of exchange on which this suit is brought in this honorable court, wherein plaintiff herein was plaintiff as assignee vs. defendant, and his endorsers, and for other causes apparent in said plea, demurs to the same, and prays the judgement of the court.

Filed 22d May, 1869.

J. M. RUTLEDGE, *Clerk*,
By W. F. POSTEN, *D. C.*

Circuit court of Haywood County, May term, 1869.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

12 Circuit court of Haywood County, September term, 1869.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

Circuit court of Haywood County, January term, 1870.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued for incompetency of the court.

Circuit court of Haywood County, May term, 1870.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

Circuit court of Haywood County, November term, 1870.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

Circuit court of Haywood County, March term, 1871.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

13 Circuit court of Haywood County, July term, 1871.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

Circuit court of Haywood County, November term, 1871.

JAMES BOND
v.
JOHN M. MOORE.

Present and presiding the Hon. T. J. Flippin, judge of the th circuit, having interchanged ridings with the honorable G. B. Black, judge of the 13th circuit, when the following with other proceedings were had, to wit:

Came the parties by attorneys, and the demurrer to the pleas in abatement filed herein being argued and understood by the court, the court is of opinion the demurrer is well taken and doth sustain the same.

It is therefore considered by the court that the plaintiff recover of the defendant, the costs accruing on said demurrer. It is further ordered that defendant plead over to the plaintiff's declaration filed herein.

14 STATE OF TENNESSEE,
Haywood County:

Circuit court, Nov'b'r term, 1871.

JAMES BOND
v.
JOHN M. MOORE.

The defendant Moore comes, by attorneys, and defends, &c., and says he does not owe the plaintiff in manner and form as he has in his declaration alleged, and of this he puts himself on the country.

RAINES, LEA & LIVINGSTON,
Attys. for Moore.

Replication and issue.

BATE, BOND & READ,
Attys. for Plff.

2d. Defendant comes and denies the impossibility of presenting said bill of exchange for payment at maturity because of the obstructions, war, political disturbances, and interruption of intercourse between
15 the residence of the plaintiff and that of the drawees of said bill, in manner and form as is alleged in said declaration.

RAINES, LEA & LIVINGSTON,
W'MSON, BOND & HALL,
Attys. for Deft.

Replication and issue.

BATE, BOND & READ,
Attys. for Plff.

3d. Defendant denies that said bill of exchange was presented, in a reasonable time after the removal of the alleged obstructions of war, political disturbances, and interruptions of intercourse, to the drawees of same for payment, and that due notice of non-payment was given to defendant, as is alleged in said declaration.

RAINES, LEA & LIVINGSTON,
W'MSON, BOND & HALL,
Attys. for Deft.

Replication and issue.

BATE, BOND & READ,
Attys. for Plff.

16 4th. Defendant comes and denies that he has at any time subsequent to the maturity of said bill of exchange promised to pay the sum of money due thereon to the plaintiff, or that he was ever indemnified by the drawer of said bill of exchange against any loss which defendant might sustain by reason of his alleged endorsement of same, in manner and form as is alleged in said declaration.

RAINES, LEA & LIVINGSTON,
W'MSON, HALL & BOND,
Attys. for Deft.

Replication and issue.

BATE, BOND & READ,
Attys. for Plff.

5th. Defendant denies the allegations in said declaration contained, that John A. Taliaferro, the drawer of said bill of exchange, had no funds in the hands of the drawees to pay the same, and had no reasonable
17 ground to expect that the same would be paid by them at maturity.

RAINES, LEA & LIVINGSTON,
W'MSON, HALL & BOND,
Attys. for Deft.

Replication and issue.

BATE, BOND & READ,
Att'ys for Pl'ff.

These five pleas and replications and issues thereto were filed this the 8th day of Dec., 1871.

THOS. A. RAYNOR, *Clerk.*

JAMES BOND
v.
JOHN M. MOORE.

This day appeared plaintiff, by attorney, and moved the court to strike out pleas numbers 2, 3, and 5 by the defendant pleaded herein, which motion being heard and understood by the court, the same is overruled by the court, to whch ruling of the court plaintiff, by
18 his attorney, excepts. Plaintiff then moved to strike out pleas number' 1 and 4 by said defendent pleaded, which motion being heard and understood by the court, the same is overruled by the court, to which ruling of the court plaintiff by his attorney excepts.

And thereupon this cause was continued until next regular term of the court.

Circuit court of Haywood County, March term, 1872.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

Circuit court of Haywood County, July term, 1872.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

Circuit court of Haywood County, Nov'b'r term, 1872.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

19 Circuit court of Haywood County, March term, 1873.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

Circuit court of Haywood County, July term, 1873.

JAMES BOND
v.
JOHN M. MOORE.

This cause was continued.

Circuit court of Haywood County, No'b'r term, 1873.

JAMES BOND
v.
JOHN M. MOORE.

This day came the parties, by their attorneys, and the death of plaintiff was suggested and admitted.

JAMES BOND, SR.,
v.
JOHN M. MOORE.

In this cause the death of the plaintiff, James Bond, sr., was suggested and admitted, and it appearing to the court, by consent, that Will-
20 iam W. Bond, James Bond, jr., and Calvin W. Harbert are the executors of the last will & testament of the plaintiff James Bond, sr., deceased, said suit is by consent revived in the name of the said William W. Bond, James Bond, and Calvin Harbert, as executors of the said James Bond, sr., deceased.

W. W. & JAMES BOND & C. W. HARBERT,
executors of James Bond, dec'd,
v.
J. M. MOORE.

This day came the parties, by their attorneys, and the Hon. G. B. Black, judge, being incompetent to try said cause by reason of being counsel for the defendant, by consent of parties, A. C. Estes, an attorney of this court, was chosen as special judge to try said cause, and said cause came on for trial, and thereupon came a jury of good and lawful men, to wit: L. Y. Bledsoe, Clinton Trotman, James Givens, W.
21 L. Drake, T. W. Hart, G. W. Bennet, Robert McMurry, R. T. White, H. C. Sangster, Vander Cameron, D. C. Woodall, and Edward Jones, who, being elected, tried, and sworn to well and truly try the issues joined and a true verdict render according to the law and the evidence, and the day drawing near to a close, said jury was respited until to-morrow (Friday) morning, 8½ o'clock.

A. C. ESTES,
Special Judge.

W. W. BOND AND JAMES BOND AND C. W. Harbert, executors of James Bond, sr., dec'd,
v.
J. M. MOORE.

This day appeared the jury in this cause, who, having been elected, tried, and sworn on a former day of this court to well and truly try the issues joined between the plaintiff and the defendant, and a true verdict render according to the law and the evidence, to wit, L. Y.
22 Bledsoe, Clinton Trotman, James Givens, W. L. Drake, T. W. Hart, G. W. Bennett, Robert McMurry, R. T. White, H. C. Sangster, Vander Cameron, D. C. Woodall, and Edward Jones, and the day drawing near to a close, said jury was again respited until to-morrow (Saturday) morning, 8½ o'clock.

A. C. ESTES,
Special Judge.

W. W. & JAMES BOND & C. W. HARBERT, executors of James Bond, sr., dec'd,
v.
J. M. MOORE.

This day come the jury in this cause, who, having been elected, tried, and sworn on a former day of this court to well and truly try the issues joined between the plaintiff and defendant, and a true verdict render according to the law and the evidence, to wit, L. Y. Bledsoe, Clinton Trotman, James Givens, W. L. Drake, T. W. Hart, G. W.
23 Bennett, Robt. McMurry, R. T. White, H. C. Sangster, Vander Cameron, D. C. Woodall, and Edward Jones, and the day drawing near to a close, said jury was again respited until to-morrow (Monday) morning, 8½ o'clock.

A. C. ESTES,
Special Judge.

W. W. BOND & JAMES BOND & C. W. HARbert, executors of James Bond, dec'd,
v.
JOHN M. MOORE.

This day come the jury in this cause, who, having been elected, tried, and sworn on a former day of this court to well and truly try the issues joined between the plaintiff and the defendant, and a true verdict render according to the law and the evidence, to wit, L. Y. Bledsoe, Clinton Trotman, James Given, W. L. Drake, T. W. Hart, G. W. Bennett, Robert McMurry, R. T. White, H. C. Sangster, Vander Cameron,
24 D. C. Woodall, and Edward Jones, and the day drawing near to a close, said jury was again respited until to-morrow (Tuesday) morning, 8½ o'clock.

A. C. ESTES,
Special Judge.

W. W. & JAMES BOND & CALVIN W. HARbert, executors of James Bond, sr., deceased,
v.
JOHN M. MOORE.

On motion of the plaintiff, before the jury was elected, empanelled, and sworn, and by consent of parties, it is ordered by the court that

the plaintiffs amend their writ and declaration herein by inserting four thousand dollars damages instead of three thousand dollars damages, which amendment is accordingly made.

A. C. ESTES,
Special Judge.

25 W. W. & JAMES BOND & C. W. HARBERT, executors of James Bond, sr., dec'd,
v.
JOHN M. MOORE.

Came the parties, by their attorneys, and also a jury of good and lawful men, to wit, L. Y. Bledsoe, Clinton Trotman, James Givens, W. L. Drake, T. W. Hart, G. W. Bennett, Robt. McMurry, R. T. White, H. C. Sangster, Vander Cameron, D. C. Woodall, and Edward Jones, who, being elected, tried, and sworn the truth to speak upon the issue joined, upon their oaths do say they find the issues in favor of the defendant.

It is therefore considered by the court that the defendant go hence and recover of the plaintiffs, W. W. and James Bond, and C. W. Harbert, executors of James Bond, sr., dec'd, and on motion against J. C. Read, their security on prosecution-bond, the cost of the suit; for which let execution issue.

A. C. ESTES,
Special Judge.

26 W. W. BOND & JAMES BOND & C. W. Harbert, executors of James Bond, dec'd,
v.
JOHN M. MOORE.

The plaintiffs moved the court for a new trial herein, which motion is by the court overruled, to which the plaintiffs except.

A. C. ESTES,
Special Judge.

W. W. BOND, JAMES BOND, & C. W. HARBERT, executors of James Bond, dec'd,
v.
JOHN M. MOORE.

The plaintiffs tendered their bill of exception to the judgement of the court, overruling his motion for a new trial, which, being signed and sealed by the court, is ordered to be made a part of the record in said cause.

A. C. ESTES,
Special Judge.

27 W. W. & JAMES BOND & C. W. HARBERT, executors of James Bond, dec'd,
v.
J. M. MOORE.

This day comes the plaintiff, and prays an appeal to the next term of the supreme court of Tennessee, at Jackson, Tennessee from the judg-

ment of the court rendered in said cause herein at the present term of the court, which is granted upon plaintiff's giving bond and security, in the sum of two hundred & fifty dollars, conditioned, &c.; and thereupon came H. R. Bate into open court, who acknowledged himself security of plaintiff, in the sum of two hundred & fifty dollars, conditioned to prosecute said appeal with effect, or pay all cost and damages incident on failure thereof, which is accepted by the court, and said appeal granted accordingly.

A. C. ESTES,
Special Judge.

28 *Bill of exceptions.*

W. W. & JAMES BOND & C. W. HARBERT, executors of James Bond, sr., dec'd,
v.
JOHN M. MOORE.

Be it remembered that on the trial of the above-stated cause, in circuit court of Haywood County, at March term, 1874, the following evidence was introduced, to wit: After the reading of the declaration, the pleas, and replication, the plaintiff read to the court and the jury the bill of exchange, and the endorsement thereon, to wit, John M. Moore, Trenton, Tennessee, and the protest of the notary public and his certificate, which are in the words and figures, to wit:

Exchange for $2,000.

FEBRUARY 13TH, 1862.

Four months after date first of exchange, second unpaid, pay to the order of John M. Moore two thousand dollars, $\frac{00}{100}$ waiving
29 acceptance, value received, and charge the same to account.

JN. A. TALIAFERRO,
Trenton, Tenn.

To BRADLEY WILSON & CO.,
New Orleans.

(Endorsed:) Pay to the order of James Bond.

JOHN M. MOORE,
Trenton, Tenn.

Pay to order of C. Buck.

L. W. TOLIAFERRO, *Trenton.*
C. BUCK, *Brownsville, Tenn.*

[U. S. revenue-stamp 25 cts.]

STATE OF LOUISIANA,
City of New Orleans:

By this public instrument of protest, be it known that, on this twentieth (20th) day of June, in the year one thousand eight hundred and sixty-five, at the request of W. W. Bond, esq., holder of the original bill
30 of exchange, whereof a true copy is on the reverse hereof written, I, William Shannon, notary public in and for the city and parrish New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said bill of exchange to Mr. Wilson, of the firm of

Bradley, Wilson & Co., the drawees, at their office, in this city, and demanded payment thereof, and was answered that the same would not be paid for want of funds of the drawer, and would not have been paid at maturity if presented. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said bill of exchange as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges and interest suffered or to be suffered for want of payment of the said bill of exchange.

Thus done and protested in the presence of Nicholas J. Hoey and Dennis Donovan, witness.

31 In testimony whereof I grant these presents under my signature and the impress of my said office, at the city of New Orleans, on the day and year first above written.

{NOTARY'S SEAL. WILLIAM SHANNON, NOTARY PUBLIC, NEW ORLEANS, LA.}

WILLIAM SHANNON,
Notary Public.

N. J. HOEY.
D. DONOVAN.

Exchange for $2,000.

FEBRUARY 31*th*, 1862.

Four months after date, first of exchange, second unpaid, pay to the order of J'n M. Moore, two thousand dollars. Value, waiving acceptance received, and charge the same to account.

J'N A. TOLIAFERRO,
Trenton, Tenn.

To BRADLEY, WILSON & CO., *New Orleans.*

(Endorsed:) JOHN M. MOORE, *Trenton, Tenn.*
L. W. TOLIAFERRO, *Trenton, Tenn.*
32 C. BUCK, *Brownsville, Tenn.*

I, the undersigned notary, do hereby certify that the parties to this bill of exchange, whereof a true copy is embodied in the accompanying act of protest, have been duly notified of the protest thereof, by letter to them by me written and addressed, dated on the day of said protest, and served on them respectively in the manner following, viz:

By directing notices, J'n A. Toliaferro, drawer, and John M. Moore, and L. W. Toliaferro, endorsers, at Trenton, Tennessee, and to C. Buck, endorser, at Brownsville, Tennessee. Which said notices I deposited in the post-office, in this city, on the day of said protest, in time to go by the first mail thereafter. Postage prepaid and delivered duplicates of said notices to the holder of said bill of exchange.

In faith whereof I hereunto sign my name, together with Nicholas J. Hoey and Dennis Donnovan, witnesses, at New Orleans, this the
33 twentieth day of June, eighteen hundred and sixty-five.

WILLIAM SHANNON, *Not. Pub.*

N. J. HOEY.
D. DONOVAN.

To the reading of which the defendant excepted, and the exception was overruled. Plaintiff then offered plaintiff W. W. Bond, as a witness, who, being sworn, said he was one of the executors of James Bond, sr., one of the legatees under his will, and personally interested in this suit as such legatee. Deft. then objected to his competency as

a witness, and to the competency of his testimony, which exceptions were overruled, and said Bond testified as follows, to wit:

Witness' father, James Bond, resided in Haywood County, Tennessee, from 1835 to the time of his death in 1873; said James Bond was, in June, 1865, the owner and holder of the bill of exchange in suit, and employed witness about 15th June, 1865, to take the bill to New Orleans to have same presented for payment, and protested in case of its non-payment.

34 Witness left Brownsville, Tenn., about June 15th, 1865, for New Orleans, via Fulton and Memphis, Tenn., reaching Fulton that night, and taking the first boat thence to Memphis, which place he reached next day. Witness took first boat leaving Memphis for New Orleans, and which left the evening of same day he reached Memphis. On same day he reached New Orleans he placed the bill in the hands of a notary, and had the same protested on that day. Witness remained in New Orleans one day, and took first boat leaving for Memphis after he got through with his business. Notary placed protest and notice of non-payment in post-office at New Orleans, La., directed to Jno. A. Toliaferro and John M. Moore, at Trenton, Tennessee, on same day of protest, and furnished me duplicates of same, which witness brought back to Brownsville with him. Witness was some four or five days in going from Brownsville to New Orleans, and about

35 as long in returning. Witness was detained in Memphis some hours on his return, in delivering other protests and notices in similar cases, but left Memphis for Fulton same day he reached there. Came from Fulton directly to Brownsville. On the next day after his return from New Orleans witness was introduced to a man (witness could not recollect whom) by whom he sent the duplicates he had brought with him from New Orleans to Jno. A. Toliaferro and defendant, J. M. Moore, at Trenton, Tenn. Witness did not know the man to whom he delivered the duplicates, but he promised to deliver them. Witness saw no obstructions on his way to New Orleans, although he saw Federal gunboats on the river, at the same time Memphis and New Orleans were occupied by Federal troops.

On cross-examination witness stated that he did not recollect exact date he left for New Orleans, but was satisfied it was in June, 1865.

36 Witness went in an open wagon to Fulton, no one going with him specially; met with no interruptions on his way to Fulton; met no soldiers that he recollected of, witness had no recollection as to dates except from protest. There was free and uninterrupted travel to New Orleans and back. Witness staid at Fulton some three or four hours on his trip down; found no obstructions there; was some 3 days on boat back from New Orleans back to Memphis; was gone in all from 9 to 13 days. Witness did not go with notary to post-office, and could not say of his own knowledge that the protest and notice were placed in the post-office by the notary. The notary started out and said he was going to put them in the post-office, and told witness he had put them in. Witness stopped in Memphis a part of a day on his return from New Orleans. Witness thought it was day after he returned home that he sent duplicates to Trenton for defendant and Jno. A. Toliaferro. Witness did not think he sent by E. J. Read, esq.,

37 but was of opinion that Mr. Read had introduced the man to him, by whom he sent them. Witness' impression is that mails at that time were not regular to Trenton. The messenger by whom I sent never came back to me, and witness did not know whether defendant had ever gotten the protest and notice sent. Witness did not know

whether there were any interruptions between here and Fulton in May, 1865. Witness was not in business at the time, but lived here. There were some one or two business houses here at that time, and people were getting supplies from Memphis and Jackson along during that spring. Witness did not recollect what time it was that Federals captured Col. Lea and took him off to Memphis. Witness stated that people were going from Brownsville to Fulton all the time during that spring, but that he had heard that some of them were interrupted.

38 On re-examination witness stated that before that time, during the war, people got supplies from Memphis on permits. Witness had got some himself, going to Memphis by way of Fort Pillow, but did not recollect the time, but thought it was while Vicksburgh was occupied. Witness did not have to get any permit when he went to New Orleans, in June, 1865.

Plaintiff closed here.

Defendant then introduced Judge Gid. B. Black, who testified as follows, to wit:

Witness belonged to Army of Tennessee during the war, and returned to his home at Trenton, Tenn., in spring of 1865, where he has resided for 18 or 20 years past; has had a law-office there during all that time; witness' recollection was that Gen'l R. E. Lee surrendered about first part of April, 1865; Gen'l Johnston, in April, 1865, and Gen'l Forrest, in May, 1865, leaving no organized confederate forces on the East Mississippi River. Witness stated that there were no mail com-

39 munications with Trenton during the months of May, June, or July, 1865, and was of opinion that there were none in August of that year, the mail communications with that place having been broken up early in the war, and the same not having been resumed until about 1st September, 1865. He knew that there were no mail communications with Trenton up to 29th July, 1865. There was no post-office kept there during this period. The first term of circuit court after the war was held at Trenton on 4th Monday in July, 1865, and up to that time no postal arrangements had been established.

On cross-examination witness testified that mails were suspended and post-office discontinued at Trenton during the war, and were not again established until early in fall of 1865, and might have been latter part of August, 1865, but his recollection was that it was about 1st

40 September. I know there were no mails to Trenton during all that period, but persons may have brought letters in packages as a matter of accommodation, and they were most usually left at Grigsby's drug store, but were left also at some other places in the town for distribution. Witness knows that there were no mail communications with Trenton up to the time of the circuit court in July, 1865, and they had on that account to send messages to Troy and Dyersburg by special messenger.

Deft. Moore lived about 5 miles from Trenton during all this time, and witness thinks name on back of bill is in defendant's handwriting. Witness is attorney for defendant in this suit; that witness thinks words "Trenton, Tenn.," under his signature is in handwriting of defendant. Trenton is deft.'s nearest post-office. Deft. consulted witness in fall of 1865, about bill in suit some time after death of wife of witness, which occurred about 29th July, 1865.

41 The consultation had with defendant about the bill occurred at witness' office. Deft. did not tell witness that he had received notice of non-payment. Deft. told witness in the conversation that Mr. E. J. Read had informed him that there was a notice left for him at

Grigsby's drug store, and that he went there in the first part of the month of August, 1865, and found it there, and defendant said that that was the first time he ever heard of notice, and supposed that the bill had long since been paid. Deft. said that he had no indemnity from Toliaferro from this debt; that he had never heard of the debt from the time it was endorsed by him until Mr. Read mentioned it, and supposed all the time that it had been paid. Deft. spoke of a $10.00 North Carolina debt which he had endorsed for John A. Toliaferro, and said that he had been indemnified on that debt, but that he had never been
42 on the bill in this case; that this was a home debt, and knowing that Maj. Toliaferro was solvent all the time, he supposed it had been long since paid. Deft. said in same conversation that in the interview with Mr. Read he had tried to get him (defendant) to renew the bill, but he had refused to do so. (Deft., by his attorneys, waiving all objections to above testimony, so far as it gives interview between witness and defendant.)

On re-examination, Judge Black said that in the interview between him and defendant, which occur'ed in fall of 1865, defendant stated that he had received the notice from Grigsby's drug store about 1st of August, 1865, a short time after interview between Mr. Read and defendant. Deft. told witness in same conversation that he had not heard from N. Carolina debt for two or three years, and supposed it had been paid, too, until after the war, when he had been informed by R.
43 P. Raines, esq., that he had been down here to Brownsville and saw one Rodgers, who told Mr. Raines that the North Carolina debt had not been paid. Maj. Jno. A. Toliaferro lived at Trenton, in 1862, and afterwards removed to Jackson, where he died in 1863. Deft. lived at Trenton; it is about 30 miles from Trenton to Brownsville, Tenn.; Vicksburg was captured by the Federals July 4th, 1863, and Port Hudson a few days after.

Defendant then introduced Dr. J. H. Howell, who testified that he moved from Brownsville to Memphis in 1863, where he continued to live until after middle of year 1865, engaged in mercantile business. The Mississippi River was opened up soon after fall of Port Hudson, and regular commercial communication by said river was kept between Memphis and New Orleans, with no obstructions to the close of the war, persons being permitted to travel without interruptions all that
44 time between the two places, but that he did not go to New Orleans during that period. There were boats running regular' from St. Louis, via Fort Pillow, Fulton, and Memphis, to New Orleans, and back again during that period. There was no actual war between West Tennessee and New Orleans, in May & June, 1865, and there was no interruptions on account of war, nor was there any interruptions between this section of the country and Memphis during that time. Witness did not recollect when the permit system passed away. There were no forces between Brownsville and Memphis in May or June, 1865, and witness brought a good many goods during that time from Memphis to this section of country; witness brought a boat up the Hatchie River in March, 1865, and was not molested at all. There were no bodies of confederate troops in this country; there were some guerrillas and robbers, but no bodies of soldiers.

45 Plaintiff excepted to above testimony of Dr. Howell as irrelevant which exception was by the court overruled.

Witness heard that other boats after his were interrupted by soldiers. Deft. here introduced B. P. Boyd, who te-tified that he lived in

Brownsville in April, May, & June, 1865, selling goods. There was a regular line of hacks from here to Fulton, in May, 1865. He went to Memphis about that time. There were no soldiers in this country, and it was perfectly safe to go to Memphis. There were confederate soldiers passing about the country, but never interrupted *no*body. They were discharged or paroled soldiers. There was no difficulty at all in going from here to Trenton at that time. Witness knew of no interruption between Memphis and New Orleans during that time. I was also in Nashville in May, 1865.

Cross-examined:

No permits were necessary between Brownsville and Memphis, in April, May, & June, 1865. Supposed there was a military force
46 at Memphis at that time, but hostilities had ceased. Witness got military permits himself, and his general information was that permits and passes were not necessary at that time.

Deft. then announced that he was through with his testimony, and the plaintiff offered to introduce E. J. Read, esq., in rebuttal, to which defendant excepted; which exception was by the court overruled.

Deft. offered himself as a witness then, to which plaintiff excepted, which exception was by the court overruled, and deft. testified as follows, to wit:

In chief:

That he lived about five miles from Trenton, Tenn., to which place he went about 29th of July, 1865, and met there on the street Mr. E. J. Read; soon afterward he heard his name called from the court-house and went over and found Mr. Read there, who told him he had him called.
He asked deft. if he had been to Grigby's drug store; he replied
47 that he had not. Mr. Read then told him that there was a letter there for him; deft. started to get it, but Mr. Read told him what was in it. He then told deft. that there was a protest with notice in it. Mr. Read asked defendant if he had got notice, who replied that he had, but supposed that he referred to the $10,000 North Carolina debt, until he mentioned something about Mr. Bond, when deft. at once explained to him that he supposed Mr. Read was refferring to the N. Carolina debt, when he told him he had received notice of its non-payment; that defendant had never received any notice of the non-payment of the bill sued on in this case, and never went to Grigsby's to get the letter with protest and notice until about the 8th of August, 1865, when he first got it. This was first notice he ever had that the bill had been protested for non-payment, and supposed, until the interview with Mr. Read, that it had long since been paid. No notice at all was received by him
48 through the mails from New Orleans or elsewhere. Mr. Read did not ask defendant to pay it, but said that Mr. Bond did not want the money on it, and simply wanted him to renew the bill, which he refused to do. Deft. told Mr. Read he had better see the administrator of John A. Toliaferro, and have it paid by the estate. It was not until *until* Mr. Read spoke of Mr. Bond's not wanting the money on it, that he understood what debt he referred to, supposing until then that he spoke of the $10,000 N. Carolina debt, of which he spoke to Judge Black. It was prior to the time that Mr. Read spoke of Mr. Bond's not wanting the money, that defendant told him he had got notice. Deft. was never indemnified at all on the bill sued on in this case, but had been by John A. Toliaferro on the N. Carolina claim. Witness never promised to pay this bill to Mr. Read. Read wrote to him three times, requesting him to renew the bill. Deft. did not reply to his two first letters, but did to

49 his third, refusing to renew the bill. He never, at any time, promised to pay the bill now in suit. There was no post-office kept in Trenton during the war, same having been suspended during that time. There was no mail communications with that place. There were two or three places there where people got letters which were left for them. I had frequently got letters from Grigsby's drug-store before that time. Never saw Mr. E. J. Read that spring before the time referred to which was after 29th July, 1865; did not see him in March, 1866. Witness knew that he did not, because he was down sick for months about that time, and unable to go out from home. Saw John C. Read in July or June, 1866. He wanted deft. to pay this bill, and he refused to do so. Deft. never received any written notice of the non-payment of the N. Carolina debt. Mr. R. P. Raines first told defendant that he had learned, down at Brownsville, that it had not been
50 paid. This was some time in the spring of 1865. The N. Carolina debt was due in 1861 or 1862, and was paid by deft. in 1866. Deft. never realised anything on the mortgage indemnifying him on the N. C. debt, because of a failure to have it registered, and the original mortgage was destroyed with other papers at the time he had his residence burnt in 1866, and he was unable to find the witness to set up his mortgage. Deft. was but an accommodation endorser on the bill of exchange now in suit, never having got a dollar of the money borrowed on it.

On cross-examination defendant stated that he did not know where the notice and protest came from that he got from Grigsby's drug-store, but was satisfied it did not come from New Orleans by mail; that he had it filed away among his papers, but lost it when his house was destroyed by fire in May, 1866. Circuit court adjourned on 29th July, 1865,
51 at Trenton, and his impression was that it was on Saturday. That Mr. Read tried to get him to renew bill, but he refused to do so; that he requested his neighbors to call at Grigsby's and other places in Trenton to get his letters for him. Stated that letters were left at two or three places in Trenton, at Grigsby's and Ivie's drug-store; that defendant had not been in town for several days before he met Mr. Read in July, 1865. That he was in the habit of sending to Trenton every week for his letters, and sometimes two or three times a week; that his neighbors sometimes brought out his letters, getting them from Grigsby's and places. Witness did not know how long the letter with the protest and notice had been at Griggsby's, but knew that it was not there on the Monday before he met Mr. E. J. Read; that Rola Raines first told him about the N. Carolina debt not being paid; that
52 Mr. Read did not show him the bill that he had until after he had told him he had received notice, and witness did not recollect whether he then showed it to him, but Mr. Read told him he represented Mr. Bond and anything he would do in the matter would be all right with Mr. Bond. That there was no register in Trenton when he took his mortgage—was the reason he did not have it registered. He had satisfied the N. Carolina debt, and had never been paid anything back on it; he paid it without suit on it.

Defendant closed his testimony here.

Plaintiff introduced E. J. Read as a witness, who testified that James Bond, sr., placed the bill of exchange, in suit, in witness' hands on 22d July, 1865, and he took same to Trenton, Tenn., and saw deft. about it on 25th July, 1865. That he saw Moore at court-house, and may
53 have had him called. He thought court was still in session. Witness and Moore went into jury-room and talked; deft. Moore

said he had received notice of protest, and that he did not want to be put any costs about it, and that it should be arranged without suit, and that he would see the administrator, and try to get him to arrange it. Witness stated he saw Moore on 20th March, 1866, in Trenton, when he to pay a part of the debt when he sold his cotton, and the balance some time afterwards. Witness stated he had no recollection of telling Moore there was a letter for him, and no recollection of going to Griggsby's before seeing Moore, although he might have done so. That deft. told him that Maj. Toliaferro had given him a mortgage on a tract of land to secure him on the debt. Cannot say whether Mr. Bond's name was called or not before he said that he had
54 received notice and protest. He took bill and looked at it. Can't say that defendant read it. The protest was there, but I can't say that defendant read it.

On cross-examination witness stated that he might have gone to Griggsby's before he had Moore called. I did not carry over any notice. Witness could not recollect whether defendant examined bill and protest, but thinks he saw his name on the bill. Witness did not think he had shown him the bill until after he had told witness that he had received notice of non-payment of bill. Recollection of witness about the whole matter is very indistinct except so far as it was refreshed by reference to a memorandum on his law-docket, made at the time. Witness stated further that he did not recollect that Mr. Bond's name was used at all, or that he told defendant what debt it was he was talking about, but from his usual habit of doing business he is satisfied he
55 must have done so. He stated that he did not introduce the man by whom Mr. W. W. Bond sent the protest and notice in June, 1865, to defendant and Maj. Taliaferro, and knew nothing of it.

Mr. Bond was mistaken in supposing he had introduced the person referred to. Witness further stated that he took down a memorandum of conversation between him and defendant at the times of July 25th, 1865, and March 20th, 1866, on law-docket, now before witness.

Defendant excepted to the testimony of E. J. Read, as being incompetent, irrelevant, and because evidence-in-chief, which exception was by the court overruled. Plaintiff next introduced Z. C. Nolen, who testified that he had been a resident of Haywood County 38 years, and during the war and in spring of 1865 witness supposed there was difficulty in going from here to New Orleans, and my under-
56 standing from rumor in the country, that there were guerrillas on the river. Witness went from here to Memphis and Saint Louis about that time. My understanding was that there were robbers and cotton burners through the country in the spring of 1865, but do not remember exact time. Witness knew nothing about it of his own knowledge; that he did not go to New Orleans, but his understanding was that there was some danger in travelling on the river.

Defendant excepted all above testimony of witness Nolen as to state of country, as being testimony in-chief. Exception was by the court overruled.

On cross-examination witness stated that he did not remember time he went to Memphis and Saint Louis; it was after Col. Lea was captured. Witness thinks it was in May or June he got back. He
57 went by way of Fort Pillow, and met with no difficulty at all.. Witness did not know even from rumor that anybody was molested in May or June, 1865; that there were bands of soldiers in West Tennessee, in April or May, 1865, that had not surrendered. The gunboats were kept on the river to prevent travel.

Plaintiff next introduced Gen. William Connor, to whose testimony defendant excepted, on the same grounds urged against the testimony of Z. C. Nolan, which exceptions were by the court overruled, and witness testified as follows, to wit:

That he lived during the war in Lauderdale County, three miles from Ripley, to the right of the road from here to Fulton—Ripley, at the same place he now lives at, to the right from here to Fulton, and that in April, May, & June, 1865, were few little bands in our country, but could not call them soldiers, but robbers. Cushman had a band in Lauderdale Co., Tenn., and pretended to be a confederate, and
58 that he was killed, he thinks, in May, 1865; that he could not tell condition of country between here and New Orleans; that he lived seventeen miles from Brownsville, and twenty-eight from Fulton, Tenn. The country between his house and Fulton, in May, 1865, was in an unsettled condition, and that some people went and some did not; that he went to Memphis in 1863, and had to get permission going and coming. Went to Memphis after Fort Pillow fell; that he did not know when the permit system stopped; that he got permission to come away from Memphis; that it was the general information and rumor that it was unsafe to travel to Fort Pillow and was generally understood all over the country.

Cross-examination:

That Lee surrendered about 14th April, 1865, and Johnston about two weeks afterwards, and Forrest in Mississippi, about May, and
59 that there was no confederate army east of the Mississippi River after that that I know of; that Col. Lea was captured in May, 1865, in Haywood County, Tenn.; that he did not go to Fort Pillow about that time, but some went; that after Cushman was shot would not have been afraid to go; that a man by the name of Luxton had a band who infected the country in April, 1865, he thinks; that after Fort Pillow fell the Federals occupied Fulton; that Forrest captured Fort Pillow in April, 1864, as well as he recollects; that about 1st June, 1865, he went to Paducah, Ky., on business, and went about first opportunity he had, and that in May, 1865, he would have gone to Fulton on business for self or neighbors.

H. B. Falk was next introduced by plaintiff, who testified that in 1865 he lived 12 miles from Brownsville, and that in April, 1865,
60 and it may be 1st May, 1865, a steamboat came up Hatchie River from Memphis, and it came up as far as Brownsville Landing to carry cotton out, and the boat, on returning, when it arrived at Bond's Landing, found men dressed in confederate uniform, went on the boat, and thinks the captain's name was Luxton, but did not take anything here, and that the boat went on down the river, and met another steamboat with soldiers aboard of it, and that witness went through the country to Maj. Joe Ester's to tell him about the steamboat, and cotton was put on it at Green's Landing, and it was below Green's Landing where the boats met; that witness was on the boat going down the river, and that the boat witness was on passed soldiers in a skiff, dressed in confederate uniform, and that boat witness was on met another boat below Ripley and Covington road, and military was on it, and tied
61 up, and boat witness was on ordered by soldiers to halt and not allowed to go up, and there were soldiers on shore on Lauderdale side, about five miles from road leading from Brownsville to Fulton; there were soldiers, and who said this was Jeff. Davis' country; and witness stated that the people on board and women and children

were crying, and the soldiers were rolling out flour and everything; that boat witness was on was allowed to go on and went on to Morgan's Landing, on Tipton shore, and thence down to Mississippi River, and that this was early part of May or last of April, and this was the first boat up to that time; that he did not think many on the river at that time, and that the railroad was not in operation at that time and before the railroad rebuilt; that gunboats were on the Mississippi about that time; that last of May or first of June went to Memphis,
62 and did not know condition of things below Memphis, and that in said trip to Memphis met steamboat coming up from Memphis with Federal soldiers, and that at this time had to get permit for cotton; that the courts were suspended at this time, and there was a military commissioner's court at Memphis, Tennessee.

Cross-examination:

Witness stated news of Lee's surrender was heard when he was on the boat this trip, last April or 1st May, 1865; that he was on this trip some time. That Capt. Bennett had charge of the steamboat, and that Capt. Luxton charge of one of the boats for a while. That witness was four or five days going to Randolph, and there heard of the hanging of Capt. Luxton; that there was no interruption going or coming after Luxton was said to have been hung; that he met Federal soldiers coming up to see about burning steamboats, and met them going back.

63 W. W. Bond, witness for plaintiff, being recalled by plaintiff, stated that he saw Federal soldiers on his way to and from New Orleans, on boats going up and coming down the river; and that there was a large number on the boat he went down on, and on cross-examination stated they appeared no obstructions to his passage.

This was all the evidence in the cause. The court charged the jury as follows:

Charge to the jury.

W. W. & JAMES BOND & C. W. HARBERT exrs., &c.,
vs.
JOHN M. MOORE.

GENTLEMEN OF THE JURY: This is an action of debt upon a bill of exchange, brought by James Bond, and revived in the names of his executors.

This action is founded upon a bill of exchange drawn by John A. Toliaferro, of Trenton, Tenn., on the 13th day of Febr'y, 1862, upon
64 Bradley, Wilson & Co., of New Orleans, and drawn in favor of John M. Moore, the defendant in this action, and by said John M. Moore endorsed to plaintiffs' testator, James Bond, sr. The purpose or object of this suit is to recover the amount of money due on said bill of exchange, and interest, of the endorser, John M. Moore.

1st. Plaintiffs admit in their declaration that this bill of exchange in litigation was not presented at its maturity to the drawees, Bradley, Wilson & Co., and allege in their declaration that Toliaferro was not entitled to have said bill presented and have notice of non-payment given, because Toliafer.o had no effects in drawees' hands.

2. Plaintiffs allege as an excuse why said bill was not presented at maturity to Bradley, Wilson & Co., the drawees, an impossibility on account of the obstructions of war, political disturbances, &c.

65 3d. Plaintiffs further allege that after the war, to wit, on the 20th day of June, 1865, they had said bill presented to Bradley, Wilson & Co. for payment, and that payment by them was refused, and that they had said bill protested for non-payment, and notice given to the defendant, Moore, of its dishonor.

4th. Plaintiffs allege that Moore promised to pay this bill subsequent to its maturity.

5th. Plaintiffs allege that Taliafferro, the drawer indemnified Moore against any loss he might sustain by reason of his endorsement.

The defendant pleads:

1st. That he does not owe the debt as alleged in the declaration.

2d. He denies the impossibility of presenting said bill at maturity, because of the obstructions of war, &c., political disturbances between the residences of the holder and drawees.

66 3d. He denies that the bill was presented to Bradley, Wilson & Co., the drawees, within reasonable time after the removal of the obstructions, such as war, political disturbances, &c., for payment, and denies that due notice of non-payment was given to him.

4th. Defendant denies having made any promise to pay said bill of exchange after its maturity, and denies that Taliaferro ever indemnified him against any loss he might sustain by reason of his endorsement.

5. Defendant denies that allegation in declaration which alleges that Taliaferro had no funds in Bradley, Wilson & Co.'s hands to pay said bill with.

I charge you, that the contract or undertaking of an endorser is conditional, and that his liability is only fixed by the holder of the bill presenting it at the proper place and at its maturity to the drawee and demanding payment of the same, and if payment is refused, by giving due notice of the dishonor of the bill to the drawer and endorser.

67 So the conditions to fix an endorser's liability are a proper presentment and demand of payment at proper time and place, and if refused by the drawee due notice to the endorser. While it is true that a bill of exchange must be presented on the very day of its maturity to the drawee, and a demand of payment made, yet there are a great many causes, the existence of which in the eyes of the law will excuse the non-presentment of a bill of exchange at its maturity.

Inevitable accidents.

2d. Presence of malignant diseases, which suspend the operation of business.

3. The presence of political circumstances, amounting to an obstruction of ordinary negotiations of trade.

4th. The breaking out of war between the country of drawer and that of the holder of the bill.

5th. The occupation of the country where the parties live, or the note is payable, by a public enemy, which suspends commercial intercourse.

68 6th. Public or positive interdictions or prohibitions which obstructs commercial intercourse.

Besides the above, there are special causes which will excuse the presentation of a bill at its maturity. The bill being an accommodation-bill of the drawer for the benefit of a particular endorser. Receiving security by an endorser to indemify himself against any loss he may sustain. Promise by the endorser to pay the bill after a full knowledge that it has not been duly presented for payment by the holder. The existances of any one of the above-mentioned cause' at the maturity of the bill would excuse the want of presentment of the bill at its maturity.

If you find from the proof that at the maturity of this bill there was a presence of political circumstances amounting to an obstruction of the ordinary negotiations of trade, then the law would excuse the holder,
69 Mr. Bond, from *from* making a presentment at the maturity of the bill. If you find from the proof that the residence of the drawees of this bill of exchange was separated from the residence of the holder of the bill of exchange by the military lines of the two contending armies, then the holder, Mr. Bond, would be excused from making a presentment of the bill at its maturity.

I charge you that the President of the U. S. issued his proclamation on the 16th day of August, 1861, declaring Tennessee in a state of rebellion, and prohibiting trade or commerce with States or places in friendly relations with the Government, and that, on the 6th day of May, 1862, New Orleans was restored to friendly relations with the Government of the United States by being captured and permanently occupied by the U. S. forces, and that after the issuance of the proclamation of the 16th of August, 1861, and after New Orleans was restored to friendly relations with the Government, on the 6th May, 1862, the citizens of Tenn. and
70 of New Orleans occupied the relation of alien enemy to each other; then, if you find from the proof that this bill fell due after the issuance of the proclamation of the President of the U. S. on the 16th August, 1861, declaring Tennessee in a state of rebellion, and after the 6th May, 1862, when New Orleans was restored to friendly relations with the Government, and before the actual cessation of hostilities, then the law would excuse the holder from making a presentment at the maturity of the bill, and if the same had been presented at its maturity, under such a state of existing circumstances, the presentment, demand, and protest would have been an absolute nullity, because in violation of the proclamation of the President prohibiting trade between Tenn. and New Orleans.

I further charge you, that if you find from the proof that the holder of this bill, within a reasonable time, and in the exercise of due
71 diligence after the impediments such as war, political disturbances, &c., were removed, the existence of which prevented a demand being made at the maturity of the bill, presented the same to the drawees, Bradley, Wilson & Co., and demanded payment, and, upon the refusal of the drawees to pay the bill, had the same protested for non-payment, and, within a reasonable time after its protest for non-payment, gave notice to the endorser, Mr. Moore, then this would be legal and operative to charge the endorser. You must look to the proof, and see whether or not this bill was presented within a reasonable time after the removal of all impediments, and whether or not due notice was given to the endorser. As to the nature or character of the impediments that will excuse the presentment of a bill at its maturity, I charge you that the obstacles or impediments which will excuse the presentment of a bill at its maturity need not be of such a character as to make travel, intercourse, or presentment impossible. It is suf-
72 ficient, if the impediments be of such a nature as to deter men of ordinary prudence and courage from encountering them in the prosecution of their business matters, but the impediments must be such as would make the presentment of the bill hazardous. As regards the impediment of the proclamation of the President of the U. S. interdicting or prohibiting commerce between the citizens of Tenn. and of New Orleans, which we have seen sustained, the relation of alien enemy, I charge you that this impediment of the proclamation was removed and ceased to exist when there was an actual cessation of hostilities; or, in other

words, the impediment of the proclamation interdicting trade lasted only so long as the condition of hostility existed between the U. States and the Confederate States, whether the President had declared by proclamation or not that the rebellion or insurrection had ceased.

73 As to the time when there was an actual cessation of hostilities, or when the condition of hostilities no longer exists, you must look to the proof and see when this impediment of proclamation was removed by an actual cessation of hostilities.

If you find from the proof that Mr. Bond, within a reasonable time after the cessation of actual hostilities, and in the exercise of due diligence, went to New Orleans and had this bill presented to the drawees, Bradley, Wilson & Co., and demanded payment of the same, and, on its refusal, gave due notice to endorser Moore, then the defendant would be liable and the plaintiff entitled to recover in this action.

As to what would be a reasonable time for the plaintiffs to have had this bill presented and demand of payment made after the removal of all impediments, is a question for you to determine under the facts

74 and peculiar circumstances of the case. The law requires of the holder of a bill of exchange or other commercial paper no impossibilities, but it does require of the holder the exercise of reasonable diligence, not extraordinary, both in making demand of payment and, after demand and refusal, the giving of notice to the endorser of its dishonor. I charge you that after the removal of the impediments the holder must use the same diligence in presenting the bill, demanding payment, and, on refusal, having it protested and giving due notice to the endorser, as he would have to use had the impediments never existed. Notice, after the dishonor of the bill, must be sent on the mail of the day that the bill was protested. If no mail on that day, then it must be sent by the first regular mail. If you find from the proof that there were regular mail-communications between New Orleans and Trenton, Tenn., at time protest was made, and that the notary public, after the protest of

75 the bill, either on the same day of protest or at least on the next regular mail, sent a notice of protest, properly addressed, to Jno. M. Moore at Trenton, Tenn., and that Trenton was his regular or nearest post-office, then you need look no further as to the notice of dishonor. The law would presume that he got notice in due time, even if, in point of fact, he never did receive it, for then the holder has discharged his duty to endorser.

I further charge you, that if you find from the proofs that there were no mail-communications, at time protest was made, between New Orleans and Trenton, Tenn., and that even if the notary at New Orleans did send a notice of protest to Mr. Moore, properly addressed to him, and sent to his proper post-office, then the law would not presume that he got due notice so as to charge him as endorser. But if you find from the that Mr. Bond, as soon as he had the bill protested for non-payment, returned immediately or as soon as practicable from New Orleans to Brownsville, and there being no mail-communication be-

76 tween Brownsville and Trenton, if you find that Mr. Bond, as soon as he arrived in Brownsville, or as soon as practicable, and he must not be guilty of negligence in this matter, employed a special messenger, and that this special messenger delivered the notice to the endorser personally or at his place of business, if he had one—if none, then at his residence—within a reasonable time after being sent, then the endorser, Mr. Moore, would be liable to the plaintiff in this action, provided you find from proof the further facts that the holder of

this bill presented the same as soon practicable after the removal of the impediments, and gave due notice of its dishonor.

If you find for the plaintiffs, say so, and allow interest from and after the war, 26th May, 1865, up to date, at the rate of 6 per cent.

If you find for the defendant, say so.

And the plaintiff asked the court to charge the jury that the plaintiff could not have legally presented the bill of exchange in
77 suit for payment until after the 13th June, 1865, the date of proclamation of President Johnson restoring Tennessee to commercial relations with the United States, and that if the jury find that, after 13th June, 1865, the plaintiff exercised reasonable diligence, and made reasonable efforts to have bill of exchange in suit presented to drawees for payment, and did present it for payment, and demanded payment, and payment thereof was refused, and thereupon the same was protested for non-payment, and that if the jury find the plaintiff then exercised reasonable diligence, and made reasonable efforts to give notice of non-payment, to endorser, J. M. Moore, they will find for the plaintiff. Which the court refused to charge; to which ruling of the court the plaintiff excepted.

The plaintiff moved the court for a new trial, which motion was overruled by the court; to which ruling of the court the plaintiffs
78 except, and plaintiffs tender this their bill of exceptions to the judgment of the court overruling his motion for a new trial, which he prays may be signed and sealed by the court and made a part of the record in this cause; which is accordingly done, this 21st day of March, 1874.

A. C. ESTES,
Special Judge.

Judgment of supreme court.

April term, 1874.

And on, to wit, the 16th day of May, 1874, one of the days of said term, the following judgment was rendered by said court in this cause, to wit:

W. W. BOND, JAMES BOND, AND C. W. HARbert, executors of James Bond, decd., *v.* JOHN M. MOORE. } 75 L. D. 13th cir.

79 The parties appear by their attorneys, and thereupon the record, proceedings, and judgment of the court below in this cause being seen and understood by this court, and it appearing that in the same there is no error, it is therefore considered by the court that the judgment aforesaid be in all things affirmed, and that the defendant in error go hence, and recover of the plaintiffs in error and Edward J. Read, the surety on prosecution-bond, and H. R. Bate, the surety on appeal-bond, the costs of this cause in this court and the court below, for which let execution issue.

The honorable Thomas J. Freeman, having been of counsel in this cause below, retired from the bench and did not sit on the hearing thereof in this court.

Petition for writ of error.

STATE OF TENNESSEE, *to wit:*

In the supreme court of said State. April term, 1874.

80 WILLIAM W. BOND, JAMES BOND, AND Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate, plaintiffs in error,
v.
JOHN M. MOORE, DEFENDANT IN ERROR.

Came the said plaintiffs in error, William W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate, their surety on appeal-bond, by their solicitors, and pray the allowance of a writ of error in this cause to the Supreme Court of the United States; and they say that in the judgment and proceeding had in this cause before the honorable the supreme court of said State manifest error hath intervened in this, to wit:

1st. Because the circuit judge charged the jury as follows: "As regards the impediments of the proclamation of the President of the
81 United States interdicting or prohibiting commerce between the citizens of Tennessee and of New Orleans, which, we have seen, sustained the relation of alien enemy, I charge you that this impediment of the proclamation was removed and ceased to exist when there was actual cessation of hostilities; or, in other words, the impediment of the proclamation interdicting trade lasted only so long as the condition of hostility existed between the United States and the Confederate States, whether the President had declared by proclamation or not that the rebellion or insurrection had ceased. As to the time when there was an actual cessation of hostilities, or when the condition of hostilities no longer existed, you must look to the proof and see when this impediment of the proclamation was removed by an actual cessation of hostilities."

2d. Because the plaintiff asked the court to "charge the jury that the plaintiffs could not have legally presented the bill of exchange in
82 suit for payment until after 13th day of *of* June, 1865, the date of the proclamation of President Johnson restoring Tennessee to commercial relations with the United States, and that if the jury find that after the 13th day of June, 1865, the plaintiffs exercised reasonable diligence and made reasonable efforts to have bill of exchange in suit presented to the drawees for payment, and did present it for payment, and demanded payment, and payment thereof was refused, and thereupon the same was protested for non-payment, and that if the jury find they exercised reasonable diligence and made reasonable efforts to give notice of non-payment to the endorser, John M. Moore, they will find for the plaintiffs;" "which the court refused to charge," both of which said charges and rulings of the said circuit judge were affirmed by the said supreme court of the State of Tennessee, which said judgment of the said supreme court of the State of Tennessee, in affirming the said rulings of the circuit court, plaintiffs insist is in violation of and in
83 contravention of the act of Congress of 13th July, 1861, and other acts of Congress, and of the proclamation of the President of the United States issued in pursuance thereof, to wit, the proclamations of the President of the United States of the 16th August, 1861, the 12th

May, 1862, the 1st day of July, 1862, and 13th June, 1865, and 2d April, 1866.

3d. Because it is claimed specially by the appellants in error the said bill of exchange in suit was duly protested, and notice thereof duly given to the defendant in accordance with the said act of Congress and the said proclamations of the President of the United States issued in pursuance thereof, and which said acts of Congress and said proclamations were drawn in question in the said suit, and the decision of the said supreme court of Tennessee was against the validity thereof, and in violation of the rights of the appellants.

For these and other manifest errors apparent in the record and
84 proceedings in this cause, said William W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate, their surety in the appeal-bond, being plaintiffs in *in* error, pray that the said judgment may be reversed and set at nought, and that said cause be remanded for a new trial.

Jackson, Tennessee, the 10th day of June, 1874.

WILLIAM W. BOND,
Executor of James Bond, Deceased,
By E. J. & J. C. READ &
BATE, FREEMAN & BOND,
His Attorneys.

JAMES BOND,
Executor of James Bond, Deceased,
By E. J. &. J. C. READ &
BATE, FREEMAN & BOND,
His Attorneys.

CALVIN W. HARBERT,
Executor of James Bond, Deceased,
By E. J. & J. C. READ &
BATE, FREEMAN & BOND,
His Attorneys.

H. R. BATE.

(Endorsed:) Filed June 10th, 1874. Jno. H. Freeman, clk.

85 *Writ of error bond.*

Supreme Court of the United States.

WILLIAM W. BOND, JAMES BOND, AND CALVIN W. Harbert, executors of James Bond, deceased, and H. R. Bate, plaintiffs in error and appellants,
v.
JOHN M. MOORE, DEFENDANT IN ERROR.

Know all men by these presents, that we, William W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, of the county of Haywood and State of Tennessee, and H. R. Bate, of Covington, Tipton County, Tennessee, and Thos. C. Muse, are held and firmly bound unto John M. Moore in the sum of one thousand dollars,
to be paid to the said John M. Moore, his executors and adminis-
86 trators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this the 10th day of June, A. D. 1874.

Whereas the foregoing-named William W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Tennessee: Now, therefore, the condition of this obligation is such that if the above-named William W. Bond, and James Bond, and Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate, shall prosecute their said writ of error to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

87

WILLIAM W. BOND,
Executor of James Bond, Deceased,
Per E. J. & J. C. READ & BATE
FREEMAN & BOND,
His Attorneys.

JAMES BOND,
Executor of James Bond, Deceased,
Per E. J. & J. C. READ & BATE
FREEMAN & BOND,
His Attorneys.

CALVIN W. HARBERT,
Executor of James Bond, Deceased,
Per E. J. & J. C. READ & BATE
FREEMAN & BOND,
His Attorneys.

H. R. BATE.
THOS. C. MUSE.

Approved:

A. O. P. NICHOLSON,
Chief-Justice of Tennessee.

June 10th, 1874.

(Endorsed:) Filed June 10th, 1874. Jno. H. Freeman, clk.

88 *Writ of error from Supreme Court of U. S.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of the State of Tennessee:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Tennessee, before you, or some of you, being the highest court of law or equity of the said State of Tennessee in which a decision could be had in the said suit between William W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate, the last one surety in the appeal-bond, and John M. Moore, wherein was drawn in question the construction of a statute of the United States, and the decision was against the right, title, and privilege, or exemption severally set up or

89 claimed under such statute, and other matters over which the Supreme Court of the United States has jurisdiction, as will fully appear by the record herein, a manifest error happened, to the great damage of William W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate, as by their complaint appears; and we, being willing that the error, if any hath been,

should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and speedily, send you the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday in October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, *that* said Supreme Court
90 may cause further to be done therein to correct that error what of right and according to the laws and customs of the United should be done.

Witness the honorable Morrison R. Wait', Chief-Justice of the Supreme Court of the United States, this the ninth day of June, 1874.

HORACE E. ANDREWS,
Clerk U. S. Circuit Court, D. W. Tenn.

(Endorsed:) Filed June 10th, 1874. Jno. H. Freeman, clk.

91 *Citation.*

To John M. Moore, of Gibson County, State of Tennessee, greeting:

You are hereby cited and admonished to be and appear in a Supreme Court of the United States, to be holden at Washington on the first Monday in October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Tennessee, wherein William W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, and H. R. Bate are plaintiffs and John M. Moore is defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf. Given under my hand at the city of Jackson, in said State of Tennessee, this 10th day of June, A. D. 1874.

A. O. P. NICHOLSON,
Chief-Justice of Tennessee.

92 (Endorsed:) Wm. W. Bond & al., exrs., &c., vs. John M. Moore. Citation.

Executed by delivering a true copy of this citation to the within-named John M. Moore on this the 20th day of June, 1874.

J. WILLIAMS,
Sheriff of Gibson Co.,
By J. WILLIAMS, JR., *D. Shff.*

Filed June 20th, 1874.

JNO. H. FREEMAN, *Clk.*

THE STATE OF TENNESSEE:

I, John H. Freeman, clerk of the supreme court of said State for the western division, at Jackson, do hereby certify that the foregoing is a full, true, and complete transcript of the record in the case of
93 W. W. Bond, James Bond, and Calvin W. Harbert, executors of James Bond, deceased, against John M. Moore, as the same appears of record and on file in my office.

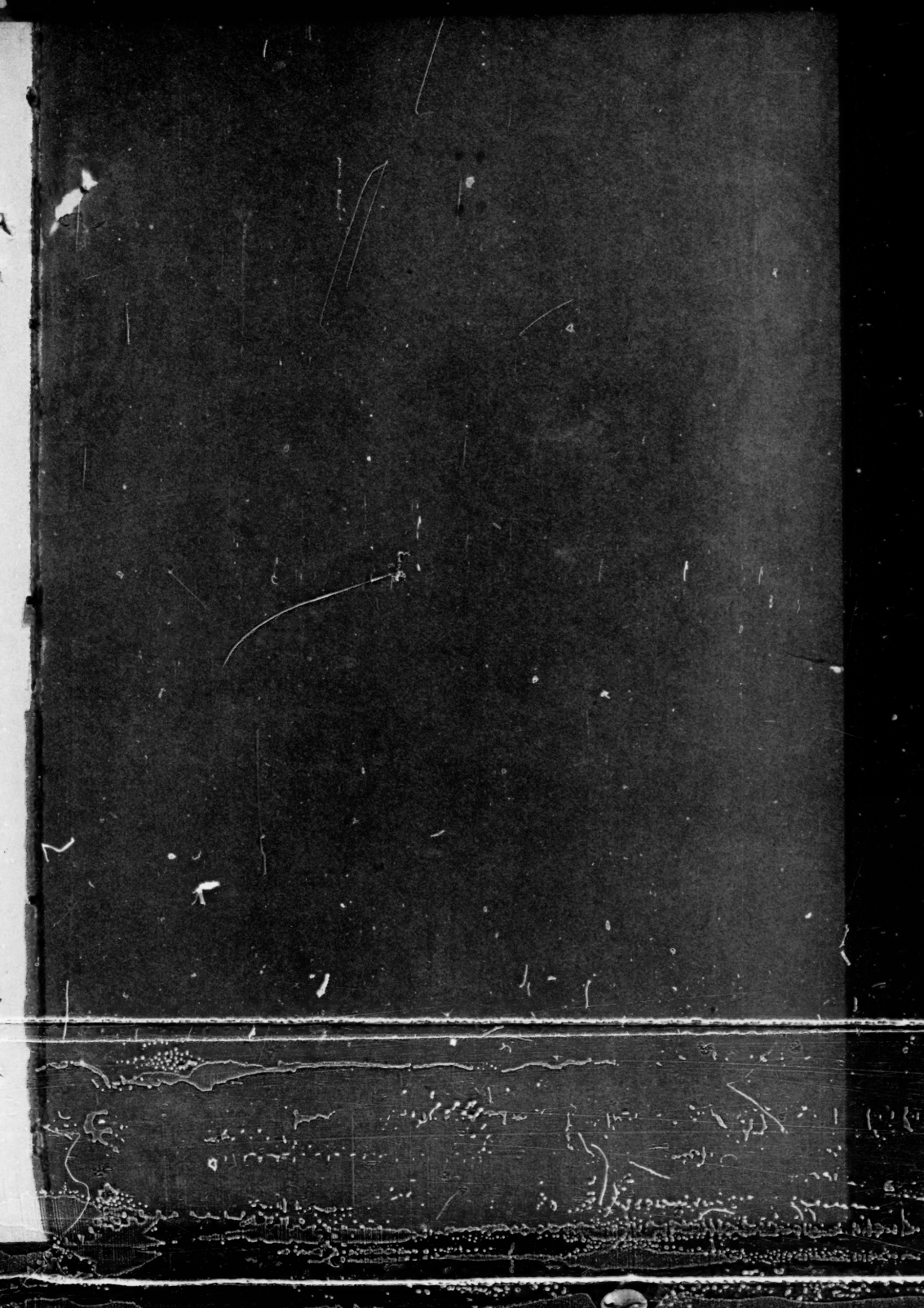
In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office in the city of Jackson, on this 17th day of

September, A. D. one thousand eight hundred and seventy-four, and of the Independence of the United States the 99th year.

[SEAL.] JNO. H. FREEMAN, *Clerk.*

(Indorsement on cover:) No. 586. William W. Bond, James Bond, & Calvin W. Hurbert, exors. of James Bond, decd., and H. R. Bate, plaintiffs in error, vs. John M. Moore. Tennessee sup. court. Filed 12th October, 1874.

REC. 586—4



In the Supreme Court of the United States.

OCTOBER TERM, 1876.

WM. W. BOND and others, Executors &c., Plaintiffs in Error,
vs.
JOHN M. MOORE.
} No. 121.

STATEMENT OF THE CASE:

Testator of plaintiffs in error sued the Defendant in the Circuit Court of Haywood County, Tennessee, as endorser on the bill of exchange drawn by John A. Taliaferro on Bradley, Wilson & Co, New Orleans, La, for two thousand dollars, waiving acceptance, payable to the order of defendant, at four months after date, and dated February 13th, 1862, and by Defendant endorsed to said Testatator and protested for non-payment 20th June, 1865, of which Defendant had due notice. See top page record 2 and 3. "The obstructions of war, political disturbances and interruption of intercourse between the residence of plaintiff and that of the drawee are alleged as an excuse of not having it protested sooner."

Plaintiffs asked the Court to charge the jury among other things as follows: "That the plaintiff could not have legally presented the bill of exchange in suit for payment until after the 13th June, 1865, the date of Proclamation of President Johnson, restoring Tennessee to commercial relations with the United States, and that if the jury find that after 13th of June, 1865, the plaintiff exercised reasonable diligence and made reasonable efforts to have bill of exchange in suit presented to drawees for payment, and did present it for payment and demanded payment and payment was refused, and thereupon the same was protested for non payment, and that if the jury find the plaintiffs then exercised reasonable diligence, and made reasonable efforts to give notice of non payment to endorser, J M. Moore, they will find for the plaintiff," which the Court refused to do. See top page 24 of record. And there was a verdict and judgment for defendant, to

which plaintiff excepted and moved for a new trial, which was refused and an appeal therefrom taken to the Supreme Court at Jackson, Tennessee, where it was affirmed.

ARGUMENT

The question is, whether the point involved a Federal question sufficient to give this Honorable Court Jurisdiction, and it is insisted by plaintiff in error that it does and cites the following in support of plaintiffs' position.

The Proclamations of the President and the laws of the United States forbade the Testators from making any demand and protest, and giving notice sooner than the 20th of June, 1865, as Tennessee was not restored to commercial relations with the United States until the 13th of June, 1865, and New Orleans, La., fell under Federal authority on the 25th of April, 1862, and remained so to the end of the war, see Stevens *vs* Williams, 19 Wallace, 572 Act of Congress the 13th of July, 1861. Proclamations of the President, August the 16th. 1861, May the 12th, 1862, and July the 1st. 1862.

His Honor, the Circuit Court Judge, ignored the Act of Congress of July 13th, 1861, and the Proclamations of the President made under and in pursuance thereof, and disregarded the same in his said charge to the Jury in refusing to charge the points requested by plaintiffs in error, and by charging as he did. Is not this then a decision wherein is drawn in question the validity of a statute or an authority exercised under the United States and against their validity ? making and declaring the same void and of no effect, or is not this decision against the right, the title, privilege or exemption specially set up or claimed by the plaintiff in error under such statute or proclamation of the President made in pursuance thereof ?

By the proclamation of the President of June the 13th, 1865, Tennessee was put in antagonism with the States of Mississippi and Arkansas and with nearly all of the State of Louisiana excepting the city of New Orleans, and this Honorable Court can judicially know that the States of Mississippi and Arkansas are located between Tennessee the residence of plaintiff and of defendant, John M Moore, and the city of New Orleans and that the messenger in passing down the Mississippi River to New Orleans, La., was going through unfriendly territory

If the demand of payment and protest, had been made before the 13th of June, 1865, it would have been in violation of the Act of Congress, of 13th of July, 1861, of the Proclamation of the President of 16th of August, 1861, and of 12th of May, 1862 and the protest and notice thereof, would have been null and void.

The case of Stevenson *vs* Williams, 19 Wallace 572, and the law laid down therein by the able Judge who delivered the opinion of this Court, is as far from being in favor of the defendant in error, as the the "Orient is from the Occident," but is in favor of the plaintiff in error herein, because in that case of Stevenson *vs* Williams, 19 Wallace, 572, the State Court of Louisiana sustained the said Act of Congress, and the proclamation of the President, and consequently this Court had no jurisdiction to review it, but in the case now before this Honorable Court, Hon. [illegible] the Circuit Judge, presiding therein,

at Brownsville, Tennesse, ignored the said Act of Congress, and proclamation of the President, and treated the same as naught, and we think that this Honorable Court has jurisdiction to review the said decision of the Supreme Court of the State of Tennessee, affirming the decision of the Circuit Court at Brownsville, Tennessee, and should reverse the same and remand

This Honorable Court, held in the case of Masterson *vs* Howard, 18 Wallace 106, "that the war continued, until proclamation was in like manner officially made of its close," citing the case the "Protector," 12 Wallace 700.

A proclamation by the Government, is an official notification, that the laws of war, prohibiting intercourse, are suspended: Wheaton's International law, page 885. As to the legal effect of Proclamations of the President, see the case of Semmes, Administrator *vs* City Fire Insurance Company, 4 American Law Review, page 175.

The case of Mathews, *vs* McStea decided by this Honorable Court, 1 Otto, 7, is in favor of plaintiff's position and shows the effects of the proclamation of the President and Acts of Congress. Story on Bills, sections 326, 365 and 366, Parsons on notes and bills, vol. 1, 460, This Honorable Court is respectfully and specially referred to Act of Congress, 13th July, 1861 and proclamation of the President, 19th April, 1861, 12th May, 1862, 16th August, 1861, 1st July, 1862, 2d April, 1863, and to the opinion of this Honorable Court, delivered by that distinguished jurist Justice Grier, 2 Black's Reports 670 and 665. 1st vol Blackstone's Commentaries, side page 257.

The law does not require actual notice; it requires diligence only and reasonable efforts made in good faith to give it. See decisions of the Supreme Court of the United States, 18 Curtis 260, Dickins *vs* Beal, 12 Curtis (10 Peters),

Farmers and Merchant's Bank *vs* Battle & Massey, 4 Hump. 86 Shed *vs* Brett, 1 Pickering 401, when the place is mentioned in the endorsement it is to be considered as part thereof and notice sent there is sufficient. 1 Parsons on notes and bills 494, 18 Curtis 256, 260, 4 Sneed, 392, 4 American Law Review, 176.

In Hopkirk *vs* Page, 2 Brock, 20, opinion delivered by Chief Justice Marshall, growing out of the Revolutionary war, is an important and analogous case.

Redfield and Bigelow leading cases upon bills of exchange and promisory notes, page 446.

The charge of his honor, the Circuit Judge was erroneous in reference to acts of Congress, the proclamation of the President as to their not being conclusive as to the hostilities, their beginning and end and as to prohibition and interdiction by the government His charge is erroneous in reference to the mode of sending notice of protest by plaintiffs' testator to defendant, and in refusing to charge the Jury as requested by the plaintiffs and by admitting the testimony, to which they objected See top page 21, 22, 23 and 24th of record. I think there is not the least doubt that the cause should be reversed and remanded.

EDWARD J READ,
For the Plaintiffs in error,

Supreme Court of the United States.

No. 121.

WILLIAM W. BOND AND OTHERS, PLAINTIFFS IN ERROR,

vs.

JOHN M. MOORE.

In Error to the Supreme Court of the State of Tennessee.

BRIEF FOR DEFENDANT IN ERROR.

R. T. MERRICK,
For Defendant in Error.

Judd & Detweiler, Printers.

Supreme Court of the United States.

No. 121.

WILLIAM W. BOND AND OTHERS, PLAINTIFFS IN ERROR,

vs.

JOHN M. MOORE.

In Error to the Supreme Court of the State of Tennessee.

BRIEF FOR DEFENDANT IN ERROR.

The suit in this case is against an indorser on a bill of exchange. There are several defenses. That, upon which the question arises, which is brought here, is that the bill was not duly protested. The only exceptions taken are to the charge of the State court on that point.

That court charged, in substance, that the impediment of non-intercourse between the State of Tennessee, where the indorser resided, and the city of New Orleans, where the bill was to be presented for payment—an impediment interposed by the existence of the war of the rebellion, and which during its continuance suspended the necessity of presenting the bill for payment—was removed by *the actual cessation of hostilities;* and that the time when this actual cessation occurred, was a question to be decided by the jury from the proof before them, (Record, pp. 21, 25.)

The plaintiffs requested an instruction from the court to the jury, to the effect that no commercial intercourse was

legal between Tennessee and New Orleans, until after June 13, 1865, the date of President Johnson's Proclamation, declaring the rebellion at an end in all the territory of the United States east of the Mississippi; and that protest of the bill made within a reasanable time after that date would be a sufficient protest. This instruction the court refused, and was sustained in its refusal by the supreme court of the State. On the ground of such refusal, the case is now brought to this Court.

It is respectfully submitted, 1st. That no Federal question is raised to sustain the jurisdiction of this Court. 2d. That, even if there is a Federal question involved, this Court will not entertain jurisdiction, as there are other issues involved in the case on which it might have been decided. 3d. That the action of the State court was in itself right and proper.

I.

The validity of the Proclamation of June 13, 1865, is not controverted; but, at most, only its application to the case. Nor does it appear that the plaintiffs had any rights or immunities under any law of the United States or Presidential Proclamation that was disregarded by the court in its charge. The act of July 13, 1861, (12 Stat., 255,) prohibited commercial intercourse "so long as the condition of hostility should continue." And the Proclamation of August 16, 1861, (12 Stat., 1262,) issued in pursuance of that act, decreed that the prohibition should continue "until such insurrection should cease or have been suppressed." Now, the charge of the Court is in perfect accord with these enactments, and deprives the plaintiffs of no right to which they may have been entitled thereunder.

It was the existence of war, and not any Presidential Proclamation, that made commercial intercourse illegal; and so it was the cessation of hostilities, and not any proclamation, that authorized the resumption of such inter-

course. These proclamations simply recognize existing facts.

Masterson *vs.* Howard, 18 Wallace, 105.

II.

Even if the refusal of the instruction asked by the plaintiffs could be considered to raise a federal question proper for the cognizance of this tribunal, it is well settled that this Court will not entertain jurisdiction, if the record shows that the judgment of the State court can be supported on any other ground.

Rector *vs.* Ashley, 6 Wallace, 142.

There were other issues raised in the case, and testimony given upon those issues, (Record, pp. 16, 17;) and the judgment may be supported on any one of them.

III.

In any event, the action of the State court was right and proper, both in the charge given and its refusal to charge, as requested by the plaintiffs.

The plaintiffs seem to have ignored the fact, that the Presidential Proclamation of June 13, 1865, (13 Stat., 763,) upon which they rely, had been preceded by two other Proclamations, that of April 29, 1865, (13 Stat., 776,) and that of May 22, 1865, (13 Stat., 757,) authorizing the resumption of that commercial intercourse, which they claim not to have been authorized before June 13, 1865.

By the Proclamation of April 29, 1865, it was ordered "that all restrictions upon internal, domestic, and coastwise "commercial intercourse be discontinued in such parts of "the State of Tennessee, Virginia, North Carolina, South "Carolina, Georgia, Florida, Alabama, Mississippi, and so "much of Louisiana as lies east of the Mississippi river, *as* "*shall be embraced within the lines of national military occupa-*

"*tion.*" And by that of May 22, 1865, it was ordered, "that "all restrictions upon trade heretofore imposed in the terri- "tory of the United States east of the Mississippi river * " * * * * be removed."

In view of the Proclamation of April 29, 1865, it was certainly proper for the State court, to leave to the jury to decide how much of the territory in question was embraced "within the lines of national military occupation," and to make the right of intercourse dependent on the "actual cessation of hostilities." Even upon the theory of the plaintiffs, the 22d of May, and not the 13th of June, should be taken as the initial point for the resumption of intercourse. Had the Court instructed the jury as prayed by the plaintiffs, the defendant might have justly complained, upon the same theory, that he was deprived of the rights and immunities resulting from the Proclamations of April 29 and May 22, 1865.

Such being the plain letter of the law, it seems superfluous to cite authorities upon the subject. But the case of Masterson *vs.* Howard, (18 Wallace, 105,) is conclusive on the point. There the Court says: "The citizens of Cali- "fornia and Illinois had a right to seek the courts of the "United States in Texas, or to proceed with suits com- "menced therein previous to the war, so soon as those "courts were opened, *whether official proclamation was made* "*or not of the cessation of hostilities.*" Commercial intercourse, therefore, may be renewed on the actual cessation of hostilities, and need not await official proclamation of the fact. Hence, the question of due diligence in the matter of protest is not one to be decided by any such official proclamation.

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